



## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. Customs And Border Protection**

#### **Notice Of Issuance Of Final Determination Concerning**

#### **Certain Treadmills**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain treadmills. Based upon the facts presented, CBP has concluded that, for purposes of U.S. Government procurement, the country of origin of the treadmills is the United States in Scenario One and Taiwan in Scenario Two.

**DATE:** The final determination was issued on November 01, 2016. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ross Cunningham, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325-0034.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on November 01, 2016, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain treadmills, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H262943, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of

1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that in both scenarios, the processing in the United States or in Taiwan results in a substantial transformation. Therefore, for purposes of U.S. Government procurement, the country of origin of the treadmills is the United States in Scenario One and Taiwan in Scenario Two.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: November 1, 2016

Alice A. Kipel, Executive Director  
Regulations and Rulings  
Office of Trade

HQ H262943

November 01, 2016

OT:RR:CTF:VS H262943 RMC

CATEGORY: Country of Origin

John A. Knab  
Garvey Shubert Barer PC  
1000 Potomac Street NW  
Suite 200  
Washington, DC 20007

Re: U.S. Government Procurement; Country of Origin of Treadmills; Substantial Transformation

Dear Mr. Knab:

This is in response to your letter dated March 16, 2015, requesting a final determination on behalf of Johnson Health Tech North America (“Johnson”) pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or for products offered for sale to the U.S. Government. This final determination concerns the country of origin of treadmills. As a U.S. importer, Johnson is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

**FACTS:**

Johnson is an exercise equipment manufacturer based in Cottage Grove, Wisconsin. It is a wholly-owned subsidiary of the Taiwanese entity Johnson Health Tech. Co., Ltd. (“JHT”). JHT, through its subsidiaries, operates in Taiwan, China, and the United States.

The equipment at issue is the Matrix® T3xe commercial treadmill. Johnson describes the Matrix® T3xe as a “state of the art, electric, motorized treadmill controlled by software in a control box located in a user-friendly console supported by a console mast.”

In its submission, Johnson describes two scenarios for assembling the Matrix® T3xe. In short, the first involves welding the metal components comprising the treadmills’ major subassemblies in the United States, assembling the components in the United States to form the finished product, and then partially disassembling the treadmills for shipment to U.S. customers. The second is similar to the first, except that the welding and assembly will occur in Taiwan before the finished treadmill is partially disassembled and sent to the U.S. customer.

**1. Scenario One – Final Assembly in the United States**

**a. Design in the United States**

Johnson states it designs and engineers the Matrix® T3xe and similar models of treadmills in Wisconsin based on product development done in the United States and in consultation with designers and engineers in Taiwan. The engineering and design group uses SolidWorks software to create 3D computer-aided design (“CAD”) models and 2D models for use as diagrams to guide the manufacturing process. Each treadmill generally has between 200 and 400 2D CAD drawings representing between 400 and 700 separate components or subassemblies used in the treadmill.

Johnson also states that the Matrix® T3xe's console software is designed in the United States, while the "detailed coding" is done in Taiwan.

**b. Component Parts and Materials Come From China & Other Countries**

According to the bill of materials that Johnson provided, the Matrix® T3xe consists of approximately 466 individual parts. The vast majority of these parts are produced in China from Chinese materials.

Under both scenarios, however, the Matrix® T3xe will also include some parts from the United States, Italy, and Taiwan. Under Scenario 1, the coated wooden deck that comprises the base will be of U.S. origin, and the elastic belt that the user walks on will be of Italian origin. Additionally, the elastometer, the cover for the driver motor, the television tuner, and the heart-rate monitor will be of Taiwanese origin. All other parts will be of Chinese origin.

**c. Assembly, Time & Employees**

**i. Description of Major Subassemblies**

Johnson states that the finished treadmills will consist of three major subassemblies: (1) the treadmill base; (2) the console; and (3) the console mast.

The treadmill base is the part of a treadmill that lies flat on the floor. It comprises a deck and belt that form the running surface; a set of motors and rollers that control the speed of the belt and the pitch of the running surface; and side rails and covers to protect the equipment and the user. These parts are joined together by numerous bolts, washers, and screws.

The console is essentially the computer that allows the user to control the treadmill's operation. It is situated roughly at chest height to allow the user to adjust the treadmill while in operation. Here, it consists of a touch-screen display and also incorporates a heart-rate monitor and a television tuner.

The console mast houses the console and connects it to the treadmill base. It also incorporates left and right arms to support the user and a rack for reading materials.

**ii. Chinese Operations**

In China, the console control board will be assembled and the rest of the parts that make up the finished treadmill will then be shipped to the United States for assembly.

### **iii. Assembly & Testing in the United States**

Johnson describes the U.S. assembly process as involving welding various components and “connecting, lining up, adjusting and bolting frames, tightening and torquing frame bolts, attaching motors, installing power switches, wiring, pulleys and filters.” First, workers will weld together the metal frames that comprise the three major subassemblies. The treadmill base will require 18 welding seams, the console frame, which houses the console, will require seven welding seams, and the console mast will require two welding seams.

Once the major subassemblies have been welded together, several major components will be assembled including the console parts, console mast parts, rollers, side rails, and deck and belt. The rollers, side rails, and deck and belt will then be combined with the metal treadmill base to form the “rudimentary base.”

Next, the electronic components will be bolted and wired into the rudimentary base to make the motorized and operational treadmill base. The U.S. assembly team will then temporarily assemble and wire the motorized base with the console and the console mast to make the substantially final product. The product will then be spot-checked and subjected to quality control and operational testing.

This quality control and operational testing will involve bringing the finished treadmills to a “quiet room” to ensure that the treadmill is operating properly. During testing, the assembler will run tests at different speeds and elevations and use natural hearing, noise detection equipment, and a vibrograph to check for unusual noises and vibrations.

Johnson estimates that the total time necessary for U.S. assembly and testing will be 116 minutes.

### **iv. Labor in the United States**

Johnson estimates that assembly in the United States under Scenario 1 will require 68 employees. This figure includes employees involved in the assembly process from sub-assembly welding, assembly, quality control, and packaging, but does not include those involved in design, engineering, or post-assembly installation.

## **v. Disassembly for Shipment**

Finally, the finished product will be partially disassembled by separating the treadmill base from the console and the console mast so that it can be packaged for shipment to U.S. customers.

## **2. Scenario Two – Final Assembly in Taiwan**

As noted above, Scenario Two is similar to Scenario One, with the key difference being that the subassembly-welding and final-assembly operations will occur in Taiwan before the finished treadmill is partially disassembled and sent to the U.S. client. In addition, certain parts that are Chinese in Scenario One will be swapped out for Taiwanese parts in Scenario Two (specifically, the motor chassis, the side rails, the roller set, the packaging box, the polystyrene set, and the screw set).

### **ISSUE:**

What is the country of origin for purposes of U.S. Government procurement of the Matrix® T3xe treadmill under Scenario 1 and Scenario 2?

### **LAW AND ANALYSIS:**

Pursuant to Subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

*See also* 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal

Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 C.F.R. § 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *See Belcrest Linens v. United States*, 6 CIT 204 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

The Court of International Trade has also applied the “essence test” to determine whether the identity of an article is changed through assembly or processing. For example, in *Uniroyal, Inc. v. United States*, 3 CIT 220, 225, 542 F. Supp. 1026, 1030 (1982), *aff'd* 702 F.2d 1022 (Fed. Cir. 1983), the court held that imported shoe uppers added to an outer sole in the United States were the “very essence of the finished shoe” and thus were not substantially transformed into a product of the United States. Similarly, in *National Juice Products Association v. United States*, 10 CIT 48, 61, 628 F. Supp. 978, 991 (1986), the court held that imported orange juice concentrate “imparts the essential character” to the completed orange juice and thus was not substantially transformed into a product of the United States.

In Headquarters Ruling (“HQ”) H270580, dated May 10, 2016, we considered whether a substantial transformation occurred when Johnson, the importer here, assembled “G3 Dip” and “G3 Back Extension” exercise machines in the United States. As in this case, Johnson proposed two different assembly scenarios. Under Scenario One, which applied to both machines, we held that although nearly all the parts were of Chinese origin, the extent of U.S. assembly operations was sufficiently complex and meaningful to result in a substantial transformation. Specifically, the assembly involved U.S. workers welding nine separate subassemblies with 49 seams for the “G3 Dip” and three separate subassemblies with 22 seams for the “G3 Back Extension.” In addition to the welding, U.S. workers also cleaned and degreased parts, ground down and painted the frame, and sprayed the frame with clear coat. The 200 to 500 parts that comprise the final products were then assembled in a process involving fastening hardware; adding rubber grips; capping off tube

ends; positioning pulleys; adding weights, cables, or belts; and placing warning placards. We found that a substantial transformation had occurred because the assembly operations caused the individual parts to lose their separate identities and to become integral components of a product with a new name, character, and use.

However, under Scenario Two in HQ H270580, which applied only to the “G3 Dip,” three of the nine subassemblies were imported from China as pre-assembled components. Under *Uniroyal*, 3 CIT 220, these critical components together imparted the “very essence” of the finished product. The processing in the United States thus did not result in a substantial transformation in Scenario Two. *See also National Juice Prods. Ass’n*, 10 CIT 48.

Similarly, in HQ 733188, dated July 5, 1990, we held that no substantial transformation occurred when Venezuelan exercise benches and boards were assembled in the United States. The Venezuelan metal frames as imported were essentially complete, and the U.S. assembly consisted primarily of attaching the cushions and minor parts. Further, no machining was done in the United States and no specialized training, skill, or equipment was required to assemble the exercise equipment. CBP thus held that no substantial transformation occurred in the United States.

Here, although nearly all the parts will be of Chinese origin, the extent of U.S. or Taiwanese assembly operations is sufficiently complex and meaningful to result in a substantial transformation in both scenarios. Unlike the exercise equipment at issue in HQ 733188, the treadmill parts will not be essentially complete when they are imported into either the United States or Taiwan for assembly. To the contrary, they will require substantial additional work to create a functional treadmill. Most importantly, U.S. or Taiwanese workers will need to weld a total of 27 seams to create the three major subassemblies (the treadmill base, the console frame, and the console mast) that comprise the finished treadmill. The additional assembly steps, which involve approximately 466 individual parts and “connecting, lining up, adjusting and bolting frames, tightening and torquing frame bolts, attaching motors, installing power switches, wiring, pulleys and filters,” are similar in scope and complexity to those that we found sufficient to effect a substantial transformation under Scenario One in HQ H270580. Under these circumstances, the Matrix® T3xe’s country of origin for purposes of government procurement is the United States under Scenario One and Taiwan under Scenario Two.

## **HOLDING:**

The finished treadmill’s country of origin for purposes of government procurement is the United States under Scenario One and Taiwan under Scenario Two.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel, Executive Director

Regulations & Rulings

Office of Trade

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